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7

**FILED**

Date 5/3/16 By

*Susan Saylor*

8 **BEFORE THE**  
9 **STRUCTURAL PEST CONTROL BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2016-54

12 **TIM DEAN AVILA**  
10309 Vassar Street  
13 Chatsworth, CA 91311

**ACCUSATION**

14 Mailing:  
10630 Lynrose Street  
15 Temple City, CA 91780

16 **Field Representative's License No. FR 35553**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Susan Saylor ("Complainant") brings this Accusation solely in her official capacity as  
22 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer  
23 Affairs.

24 2. On or about February 7, 2003, the Structural Pest Control Board issued Field  
25 Representative's License Number FR 35553 to Tim Dean Avila ("Respondent"). The Field  
26 Representative's License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on June 30, 2017, unless renewed.

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3. On or about December 12, 2001, the Structural Pest Control Board issued Applicator's License Number RA 19671 to Respondent Tim Dean Avila. The Applicator's License was cancelled on February 7, 2003, and has not been renewed.

4. On or about July 8, 1998, the Structural Pest Control Board issued Field Representative's License Number FR 29805 to Respondent Tim Dean Avila. The Field Representative's License was cancelled on June 30, 2001, and has not been renewed.

5. On or about February 8, 1995, the Structural Pest Control Board issued Applicator's License Number RA 170 to Respondent Tim Dean Avila. The Applicator's License was cancelled on February 8, 2001, and has not been renewed.

## JURISDICTION

6. This Accusation is brought before the Structural Pest Control Board ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

7. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY PROVISIONS

8. Code section 8567 states:

Should a field representative or applicator change his or her employment, or should an operator enter the employ of a registered company, or being already employed by a registered company change his or her employment, or being employed by a registered company leave that employment and enter the pest control business on his or her own behalf, he or she shall notify the registrar on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The registrar shall register the change in his or her records.

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1       9.     Code section 8593 states, in pertinent part:

2       (a)    The board shall require as a condition to the renewal of each operator's and field  
3       representative's license that the holder submit proof satisfactory to the board that he or  
4       she has informed himself or herself of developments in the field of pest control either  
5       by completion of courses of continuing education in pest control approved by the  
6       board or equivalent activity approved by the board. In lieu of submitting that proof, the  
7       license holder, if he or she so desires, may take and successfully complete an  
8       examination given by the board, designed to test his or her knowledge of developments  
9       in the field of pest control since the issuance of his or her license.

10       (b)   The board shall develop a correspondence course or courses with any  
11       educational institution or institutions as it deems appropriate. This course may be used  
12       to fulfill the requirements of this section. The institution may charge a reasonable fee  
13       for each course.

14       (c)   The board may charge a fee for the taking of an examination in each branch of  
15       pest control pursuant to this section in an amount sufficient to cover the reasonable  
16       regulatory cost of administering each examination.

17       10.    Section 8620 of the Code provides, in pertinent part, that the Board may suspend or  
18       revoke a license when it finds that the holder, while a licensee or applicant, has committed any  
19       acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a  
20       civil penalty.

21       11.    Section 8637 of the Code states, in pertinent part, that "[m]isrepresentation of a  
22       material fact by the applicant in obtaining a license or company registration is a ground for  
23       disciplinary action."

24       12.    Section 8641 of the Code states, in pertinent part:

25       Failure to comply with the provisions of this chapter, or any rule or regulation  
26       adopted by the board, or the furnishing of a report of inspection without the making  
27       of a bona fide inspection of the premises for wood destroying pests or organisms, or  
28       furnishing a notice of work completed prior to the completion of the work specified  
29       in the contract, is a ground for disciplinary action.

30       13.    Section 8654 of the Code states, in pertinent part:

31       Any individual who has been denied a license for any of the reasons specified in  
32       Section 8568, or who has had his or her license revoked, or whose license is under  
33       suspension, or who has failed to renew his or her license while it was under  
34       suspension, or who has been a member, officer, director, associate, qualifying  
35       manager, or responsible managing employee of any partnership, corporation, firm, or  
36       association whose application for a company registration has been denied for any of  
37       the reasons specified in Section 8568, or whose company registration has been revoked  
38       as a result of disciplinary action, or whose company registration is under suspension,

1 and while acting as such member, officer, director, associate, qualifying manager, or  
2 responsible managing employee had knowledge of or participated in any of the  
3 prohibited acts for which the license or registration was denied, suspended or revoked,  
4 shall be prohibited from serving as an officer, director, associate, partner, qualifying  
5 manager, or responsible managing employee of a registered company, and the  
6 employment, election or association of such person by a registered company is a  
7 ground for disciplinary action.

#### 8 REGULATORY PROVISION

9 14. California Code of Regulations, title 16, section 1911 states:

10 Each operator, field representative and applicator shall file his or her address of record  
11 with the board and shall notify the board of any change in address within ten (10) days  
12 of such change. The address of record of a field representative, an operator or an  
13 applicator shall be the address of the registered company by which he or she is  
14 employed or with which he or she is associated or his or her residence address if he or  
15 she is not employed and associated.

16 Each licensee shall also file his or her address for mailing purposes with the board and  
17 shall notify the board of any change in address within ten (10) days of such change.

18 15. California Code of Regulations, title 16, section 1950 states, in pertinent part:

19 (a) Except as provided in section 1951, every licensee is required, as a condition to  
20 renewal of a license, to certify that he or she has completed the continuing education  
21 requirements set forth in this article. A licensee who cannot verify completion of  
22 continuing education by producing certificates of activity completion, whenever  
23 requested to do so by the Board, may be subject to disciplinary action under section  
24 8641 of the code.

25 (b) Each licensee is required to gain a certain number of continuing education hours  
26 during the three year renewal period. The number of hours required depends on the  
27 number of branches of pest control in which licenses are held. The subject matter  
28 covered by each activity shall be designated as "technical" or "general" by the Board  
when the activity is approved. Hour values shall be assigned by the Board to each  
approved educational activity, in accordance with the provisions of section 1950.5.

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(d) Field representatives licensed in one branch of pest control shall have completed  
16 continuing education hours, field representatives licensed in two branches of pest  
control shall have completed 20 continuing education hours, field representatives  
licensed in three branches of pest control shall have completed 24 continuing  
education hours during each three year renewal period. In each case, a minimum of  
four continuing education hours in a technical subject directly related to each branch of  
pest control held by the licensee must be gained for each branch of pest control  
licensed and a minimum of eight hours must be gained from Board approved courses  
on the Structural Pest Control Act, the Rules and Regulations, or structural pest control  
related agencies' rules and regulations.

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1 **COST RECOVERY**

2 16. Section 125.3 of the Code provides that the Board may request the administrative law  
3 judge to direct a licentiate found to have committed a violation or violations of the licensing act  
4 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,  
5 with failure of the licentiate to comply subjecting the license to not being renewed or reinstated.  
6 If a case settles, recovery of investigation and enforcement costs may be included in a stipulated  
7 settlement.

8 **FACTS**

9 17. On or about June 15, 2014, Respondent submitted a Field Representative license  
10 renewal application to the Board wherein Respondent certified under penalty of perjury that he  
11 successfully completed all required continuing education coursework during his last renewal  
12 period. Specifically, Respondent signed a License Renewal Application, which provided in  
13 pertinent part:

14 Continuing Education Certification – I have completed “16” hours of  
15 continuing education required for renewal of my license. I DECLARE UNDER  
16 PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

17 Respondent filled in the “16” for the number of hours, signed his name below the above  
18 certification, and dated his signature “6-15-14.”

19 18. On or about November 3, 2014, the Board sent notification to Respondent’s address  
20 of record that he had been selected for a continuing education (“CE”) audit. Respondent was  
21 informed that he needed to submit to the Board, copies of his certificates of completion that  
22 verify the CE hours for the renewal period July 1, 2011, through June 30, 2014. Respondent was  
23 given 14 days to respond to the Board’s request or risk disciplinary action being taken against his  
24 license. Respondent failed to provide the Board with any certificates of completion of CE  
25 requirements for the renewal period indicated.

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1        19. On or about March 3, 2015, the Board sent a "SECOND NOTICE" to Respondent's  
2 address of record that he had been selected for the 2014 CE audit. Again, Respondent was given  
3 14 days to respond to the Board's request or risk disciplinary action being taken against his  
4 license. Respondent failed to provide the Board with any certificates of completion of CE  
5 requirements for the renewal period indicated.

6        20. On or about March 13, 2015, the Board received correspondence from Respondent's  
7 former employer. The correspondence included a Notice of Transfer of Employment which listed  
8 July 31, 2014, as the date Respondent left employment and a residential address for Respondent.  
9 The return of the "SECOND NOTICE" was also included in the correspondence with hand  
10 writing that states "MR. AVILA DOES NOT WORK HERE."

11        21. On or about March 16, 2015, the Board resent the "SECOND NOTICE" to  
12 Respondent at the residential address provided by Respondent's former employer.

13        22. On or about April 24, 2015, the Board resent the "SECOND NOTICE" to  
14 Respondent's mailing address on file with the Board.

15        23. On or about May 4, 2015, the Board received returned mail from the United States  
16 Postal Service marked "FORWARD TIME EXP RTN TO SEND" for the mailing address on file  
17 with the Board. The forwarding address confirmed the residential address provided by  
18 Respondent's former employer.

19        24. On or about May 8, 2015, the Board sent a "FINAL NOTICE" to the residential  
20 address provided by the United States Postal Service and Respondent's former employer. The  
21 notice advised Respondent that he had been selected for the 2014 CE audit. Again, Respondent  
22 was given 14 days to respond to the Board's request or risk disciplinary action being taken  
23 against his license.

24        25. On or about May 21, 2015, the Board received returned mail from the United States  
25 Postal Service marked "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED  
26 UNABLE TO FORWARD" for the residential address provided by the United States Postal  
27 Service and Respondent's former employer.

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1       26. On or about July 23, 2015, the Board sent notification to Respondent's address of  
2 record that he was noncompliant with codes and regulations. On or about July 30, 2015, the  
3 Board received a return of this letter with a typewritten statement "THIS INDIVIDUAL NO  
4 LONGER WORKS FOR ALLERCLEAN PEST CONTROL, INC."

5                                   **FIRST CAUSE FOR DISCIPLINE**

6                                   **(Failure to Provide Proof of Continuing Education)**

7       27. Respondent is subject to disciplinary action pursuant to Code sections 8641 and 8593  
8 in conjunction with California Code of Regulations, title 16, section 1950 subdivision (a), in that  
9 Respondent failed to provide the Board with verifiable documentation to demonstrate that he  
10 completed all of the continuing education requirements as a condition of renewal of his Field  
11 Representative License. Specifically, Respondent failed to produce copies documenting  
12 completion of sixteen (16) hours of continuing education for the renewal period of July 1, 2011,  
13 through June 30, 2014, as requested by the Board's representative. Complainant refers to and by  
14 this reference incorporates, the allegations set forth above in paragraphs 17 through 26 inclusive,  
15 as though set forth fully.

16                                   **SECOND CAUSE FOR DISCIPLINE**

17                                   **(Misrepresentation of Material Fact)**

18       28. Respondent is subject to disciplinary action pursuant to Code section 8637, in that on  
19 or about June 15, 2014, Respondent misrepresented to the Board that he had completed sixteen  
20 (16) hours of continuing education coursework in his license renewal application, when in fact he  
21 had failed to do so. Complainant refers to and by this reference incorporates, the allegations set  
22 forth above in paragraphs 17 through 26, inclusive, as though set forth fully.

23                                   **THIRD CAUSE FOR DISCIPLINE**

24                                   **(Failure to Maintain Address with Board)**

25       29. Respondent is subject to disciplinary action pursuant to Code section 8641, in  
26 conjunction with Code section 8567, and California Code of Regulations, title 16, section 1911,  
27 in that Respondent failed to comply with the provisions, rules, and regulations adopted by the  
28 Board. Specifically, Respondent failed to notify the Board of a change in his mailing address

1 within 10 days from July 31, 2014. Complainant refers to and by this reference incorporates, the  
2 allegations set forth above in paragraphs 17 through 26, inclusive, as though set forth fully.

3 **OTHER MATTERS**

4 30. Section 8620 provides, in pertinent part, that a respondent may request that a civil  
5 penalty of not more than \$5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not  
6 more than \$10,000 for an actual suspension of 20 to 45 days. Such request must be made at the  
7 time of the hearing and must be noted in the proposed decision. The proposed decision shall not  
8 provide that a civil penalty shall be imposed in lieu of a suspension.

9 31. Pursuant to 8654 of the Code, if discipline is imposed on Field Representative  
10 License No. FR 35553 issued to Respondent, Respondent shall be prohibited from serving as an  
11 officer, director, associate, partner, qualifying manager, or responsible managing employee for  
12 any registered company during the time the discipline is imposed, and any registered company  
13 which employs elects, or associate Respondent, shall be subject to disciplinary action.

14 **PRAYER**

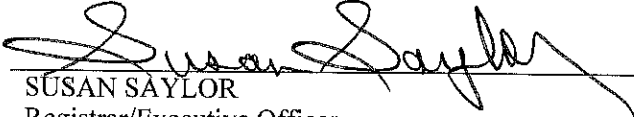
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Structural Pest Control Board issue a decision:

17 1. Revoking or suspending Field Representative's License Number FR 35553, issued to  
18 Tim Dean Avila;

19 2. Ordering Tim Dean Avila to pay the Structural Pest Control Board the reasonable  
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
21 Code section 125.3; and,

22 3. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: 5/3/16

  
25 SUSAN SAYLOR  
26 Registrar/Executive Officer  
27 Structural Pest Control Board  
28 Department of Consumer Affairs  
State of California  
Complainant

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